

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

**MARK STAAKE,**

**Plaintiff,**

**v.**

**No. 18-cv-0729 JCH/SMV**

**DAVID JABLONSKI, GERMAN FRANCO,  
GARY MACIEL, LEON MARTINEZ, MIKE BACA,  
ANDY RAY, CENTURION HEALTHCARE,  
FNU FRENCH, AMY ZAGON, LORETTA TOAPIN,  
KEVIN CARDENAS, and ELLEN WITTMAN,**

**Defendants.**

**ORDER GRANTING PLAINTIFF’S MOTION FOR RECONSIDERATION**

THIS MATTER is before the Court on Plaintiff’s Motion for Reconsideration [Doc. 11], filed November 19, 2018. Plaintiff is proceeding *in forma pauperis*, and he asks the Court to reduce his initial partial payment of \$345.70. *Id.* As explained in the Court’s previous Order Granting Plaintiff’s Motion to Proceed Under 28 U.S.C. 1915(b) [Doc. 9], that figure represents “20 percent of the greater of—(A) the average monthly deposits to the prisoner’s account; or (B) the average monthly balance in the prisoner’s account for the 6-month period immediately preceding the filing of the complaint.” 28 U.S.C. § 1915(b) (2012). Plaintiff contends that his average deposits and account balances were temporarily skewed after he received a \$5,000 deposit on May 18, 2018. [Doc. 11 at 2]. However, he represents that he transferred most of that money to another individual, and he cannot afford to pay \$345.70. *Id.*

The *in forma pauperis* statute provides that courts shall collect the initial partial payment “when funds exist.” 28 U.S.C. § 1915(b)(1). § 1915(b)(4) further cautions that a prisoner shall

not “be prohibited from bringing a civil action . . . for the reason that the prisoner has no assets and no means by which to pay the initial partial filing fee.” 28 U.S.C. § 1915(b)(4). Based on these authorities, and on Plaintiff’s updated explanation regarding his assets, the Court will **GRANT** the Motion for Reconsideration. Plaintiff represents he can pay \$100 at this time, and the initial partial payment will therefore be reduced to that amount. [Doc. 11 at 2].

**IT IS THEREFORE ORDERED** that Plaintiff’s Motion for Reconsideration [Doc. 11] is **GRANTED**.

**IT IS FURTHER ORDERED** that, no later than **December 21, 2018**, Plaintiff shall send to the Clerk an initial partial payment of \$100.

**IT IS FURTHER ORDERED** that the Clerk is directed to provide Plaintiff with two copies of this Order, and that Plaintiff make the necessary arrangements to attach one copy of this order to the check in the amount of the initial partial payment.

**IT IS FURTHER ORDERED** that, after payment of the initial partial fee, Plaintiff make monthly payments of 20% of the preceding month’s income credited to his account until the \$350 fee is paid in full or show cause why the designated payments should be excused.

**IT IS SO ORDERED.**



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**STEPHAN M. VIDMAR**  
**United States Magistrate Judge**